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May 25, 1993

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MAY 25 1993

Ms. Donna R. Searcy  
Secretary  
Federal Communications Commission  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: MM Docket No. ~~93-107~~  
Channel 280A  
Westerville, Ohio

Dear Ms. Searcy:

Enclosed for filing on behalf of Ohio Radio Associates, Inc. are an original and six (6) copies of its "Second Motion to Enlarge Issues Against Ringer."

Please contact the undersigned in our Washington, D.C. office.

Respectfully submitted,

McNAIR & SANFORD, P.A.

By: John W. Hunter  
John W. Hunter S.T.-4

By: Stephen T. Yelverton  
Stephen T. Yelverton

Enclosure

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**MAY 25 1993**

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**In re Applications of:**

**DAVID A. RINGER**

et al.,

**Applications for Construction  
Permit for a New FM Station,  
Channel 280A, Westerville,  
Ohio**

**MM Docket No. 93-107**

**File Nos. BPH-911230NM**

**through**

**BPH-911231MB**

**To: Administrative Law Judge  
Walter C. Miller**

**SECOND MOTION TO ENLARGE ISSUES AGAINST RINGER**

**Respectfully submitted,**

**MCHAIR & SANFORD, P.A.**

By: John W. Hunter

**By: \_\_\_\_\_**  
**Stephen T. Yelverton**  
**Attorneys for Ohio Radio**  
**Associates, Inc.**  
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**Washington, D.C. 20005**  
**Telephone: (202) 659-3900**

**May 25, 1993**

**B:SEARCY52.FCC**

**SECOND MOTION TO ENLARGE ISSUES AGAINST RINGER**

Ohio Radio Associates, Inc. ("ORA"), by its attorneys, pursuant to Section 1.229 (b)(1) of the Commission's Rules, hereby submits this motion to enlarge the issues against David A. Ringer ("Ringer"). This motion is based on documents exchanged by Ringer on May 10, 1993, pursuant to the standard document production, and thus is timely filed within fifteen (15) days of the discovery of new information. In support of its motion to enlarge the issues, ORA submits the following comments.

Ringer exchanged a copy of a letter, dated December 17, 1991, from Mid-Ohio Communications, Inc. The letter states in pertinent part that Mid-Ohio is "willing to negotiate" and has an "intent to negotiate" with Ringer as to use of its transmitter tower and facilities. Moreover, "mutually acceptable terms" would be negotiated in the future. Within sixty (60) days of the date of the letter, Ringer was required to make a satisfactory showing to Mid-Ohio of his financial qualifications to enter into lease arrangements for the tower and facilities.

Under long-established Commission policy, Ringer does not have "reasonable assurance" of Mid-Ohio's tower site. National Communications Industries, 6 FCC Rcd 1978, 1979, para. 10 (Rev. Bd. 1991), aff'd, 7 FCC Rcd 1703, para. 2 (1992), "reasonable assurance" of the availability of a tower site requires more than a "willingness to deal" on the part of the tower site owner; Rem Malloy Broadcasting, 6 FCC Rcd 5843, 5846, para. 14 (Rev. Bd. 1991), the fact that the site owner could foresee no problem in giving a lease does not constitute "reasonable assurance" where lease terms remain to be negotiated, citing William F. and Anne K. Wallace, 49 FCC2d 1424, 1427 (Rev. Bd. 1974); Adlai E. Stevenson, 5 FCC Rcd 1588, 1589, para. 6 (Rev. Bd. 1990), the fact that the site owner has indicated that he will discuss the possibility of a lease at some future date is insufficient, citing El Camino Broadcasting Corp., 12 FCC2d 25, 26 (Rev. Bd. 1968).

A "willingness to negotiate" does not constitute "reasonable assurance." Emission de Radio Balmeseda, Inc., 7 FCC Rcd 8629, n. 4 (Rev. Bd. 1992). Although rent and other details may be negotiated in the future, the basic terms of a

tower lease must be negotiated in order to possess "reasonable assurance." Great Lakes Broadcasting, Inc., 6 FCC Rcd 4331, 4332, para. 11 (1991), citing National Innovative Programming Network of the East Coast, 2 FCC Rcd 5641, 5643, para. 11 (1987).

An applicant is required to negotiate with the site owner in order to possess "reasonable assurance." Dutchess Communications Corp., 101 FCC2d 243, 253, para. 14 (Rev. Bd. 1985). Some basic negotiations between the applicant and the site owner must occur in order to constitute "reasonable assurance." Cuban-American Limited, 2 FCC Rcd 3264, 3266, para. 13 (Rev. Bd. 1987), rev. denied, 5 FCC Rcd 3781, para. 2 (1990). Even if a site owner would "favorably consider" use of his property and would at a future date commence "negotiations for finalizing arrangements," this is insufficient. Lee Optical and Associated Cos. Retirement and Pension Fund Trust, 2 FCC Rcd 5480, 5486, para. 23 (Rev. Bd. 1987).

Accordingly, based on applicable Commission precedent, the Mid-Ohio letter does not constitute "reasonable assurance" of a tower site. Therefore, a tower site availability issue must be specified.

Another independent basis exists to specify a tower site availability issue. The Mid-Ohio letter required Ringer to demonstrate to it within sixty (60) days of the date of the letter his financial qualifications to enter into a tower and facilities lease. Although Ringer produced financial documents shown to Mid-Ohio within the sixty (60) period, he failed to produce documents on the May 10, 1993, document exchange date showing that Mid-Ohio accepted and approved his qualifications to lease the tower site. Thus, it must be presumed that Ringer failed to meet Mid-Ohio's requirements and conditions precedent to enter into a lease arrangement. The failure of an applicant to meet the express conditions required by a tower site owner raises a substantial and material question of fact as to whether the applicant has "reasonable assurance" of its proposed tower site. Cuban-American Limited, 3266, paras. 12-13.

Accordingly, the Presiding Judge is requested to specify the following issue:

To determine whether David A. Ringer has "reasonable assurance" of his proposed tower site, and if not, whether he is basically qualified to be a Commission licensee, and thus whether his application should be granted?

If this issue is specified, ORA requests that all documents, not already exchanged, relating to the proposed tower site of Ringer and relating to his contacts with Mid-Ohio, be produced.

WHEREFORE, in view of the foregoing, ORA requests that the foregoing issue be specified against Ringer.

Respectfully submitted,

McNAIR & SANFORD, P.A.

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John W. Hunter

By:

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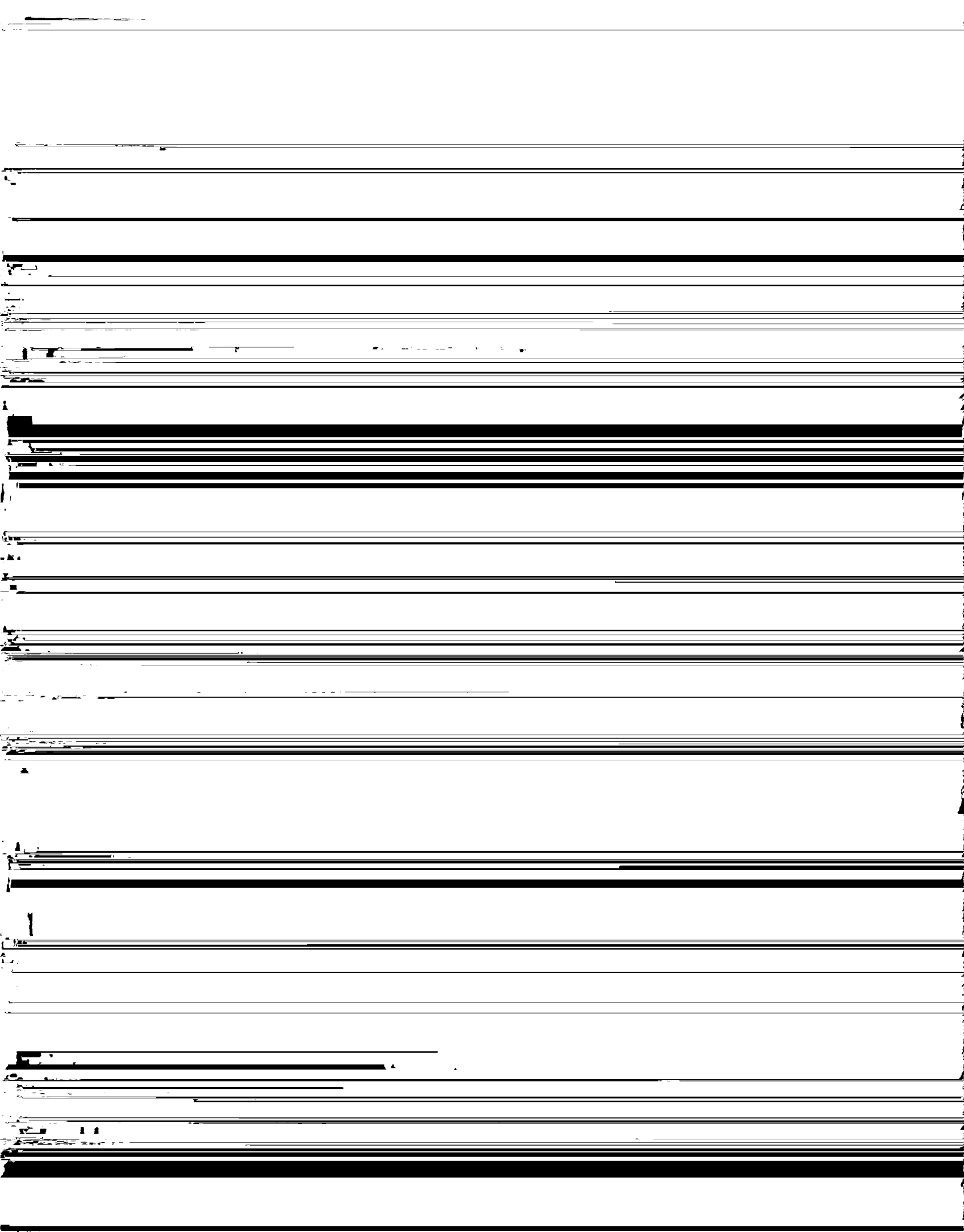
May 25, 1993

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**MID-OHIO COMMUNICATIONS, INC.****Post Office Box 14  
Westerville, Ohio 43081****December 17, 1991****Mr. David Ringer  
1000 Urdin Ave., Unit #1017  
Columbus, OH 43212****RE: Mid-Ohio Communications, Inc./WBBY-FM/Lease of Assets****Dear Mr. Ringer:**

This correspondence is in regard to your recent inquiry pertaining to the lease of certain real property and personal property owned by Mid-Ohio Communications, Inc. or affiliated companies which is utilized in regard to the broadcast operation of WBBY-FM. You have indicated that you are planning to apply for the broadcast license of WBBY-FM, Westerville, Ohio, and this correspondence is to confirm that should the Federal Communications Commission award you the construction permit, Mid-Ohio Communications, Inc., the former licensee of WBBY-FM, is willing to negotiate appropriate leases with you for certain real property and personal property owned by Mid-Ohio Communications, Inc. or affiliated companies in the amount of Six Thousand Dollars (\$6,000.00) per month.

The real estate lease and equipment lease which would commence upon the FCC granting your construction permit would include the use of the tower site (tower and building) located at State Route 37, Westerville, Ohio 43081, and the studio located at 14 Danforth Court, Westerville, Ohio 43081, and



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